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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,591	01/10/2002	Richard D. Heisey	73-96	5219

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CNH INTELLECTUAL PROPERTY LAW DEPARTMENT
CASE NEW HOLLAND INC.
P.O. BOX 1895
MS 641
NEW HOLLAND, PA 17557

EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT PAPER NUMBER

3671

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/041,591

Applicant(s)

HEISEY, RICHARD D.

Examiner

Nathan S Mammen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ushiro (U.S. Patent 4,953,427).

The Ushiro '427 patent discloses a combine harvester (Fig. 1) (i.e., in the absence of any structural definition in the instant claims of a “combine harvesters”, the fact that agricultural tractors have harvesting attachments mounted to them makes them combine harvesters). The harvester has wheels (6) for propelling the harvester over the ground, an engine (1) for driving the wheels via a hydrostatic drive system of a transmission (11), a gear select lever (25) for changing a gear ratio of the transmission, a manually operable throttle control switch (21) for providing a plurality of positions corresponding to a desired engine speed, and a speed modification switch (24). The speed modification switch has a first state and a second state, wherein movement of the gear select lever from a first position to a second position switches the speed modification switch from the first state to the second state and changes the gear ratio (col. 3, lines 57-62). An engine control circuit (Fig. 3) controls the speed of the engine. The engine control is connected to receive input from the throttle control and the speed modification switch. The engine control is responsive to the input to control the engine to run at a first speed for a given position of the throttle control when the speed control is in the first state and to run at a

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second higher speed when the throttle control is in a given position and the speed modification switch is in the second state (col. 3, lines 50-62).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ushiro (U.S. Patent 4,953,427) in view of Cornell et al. (U.S. Patent 4,663,713).

The Ushiro '427 patent discloses the claimed invention, as stated in paragraph 2 above, except for the engine control circuit being a programmable microprocessor. The Cornell '713 patent teaches that it is known in the art to provide an engine control circuit that comprises a programmable microprocessor (140). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the engine control circuit of the Ushiro '427 patent with the programmable microprocessor of the Cornell '713 patent, in order to achieve the benefits of microprocessor engine control, including customability and precision of control.

Regarding claims 3-4: The Cornell '713 patent teaches that the programmable microprocessor has means for storing and accessing data. What the Cornell '713 patent does not disclose is that the data stored and accessed includes work speed and road speed values corresponding to positions of the throttle control. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include work speed and road speed values corresponding to positions of the throttle control in the programmable

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microprocessor, in order to provide necessary information for controlling engine speed and vehicle ground speed.

Regarding claim 5: The Cornell '713 patent teaches that the engine control circuit controls the rate of fuel flow to the engine (e.g., for optimal engine efficiency).

Regarding claim 6: The Cornell '713 patent teaches that the engine control circuit and the programmable microprocessor are responsive to other loadings on the engine, from other equipment, such that the engine speed is operated at a optimal value for those components (col. 2, lines 44-48).

Response to Arguments

5. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

As stated above, the Ushiro '427 patent discloses "a speed modification switch having a first state and a second state, wherein movement of the gear select lever from a first position to a second position switches the speed modification switch from the first state to the second state and changes the gear ratio." Furthermore, as stated above, the instant claims do not include any structural definition of a "combine harvester." It is notorious in mechanized agriculture that agricultural tractors are the plenary power source: any working attachment can be provided for the tractor, including a combine attachment. Accordingly, the agricultural tractor of the Ushiro '427 meets the instant claim limitations.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

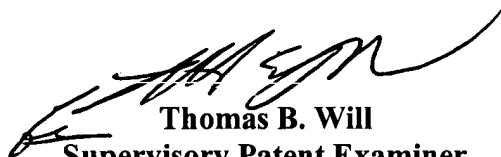
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 305-3579.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
4/19/03

Nathan S. Mammen